Opponent Testimony
Ohio House Bill 239 (Smith, R., Carfagna)
Ohio House Public Utilities Committee
June 6, 2017

Chairman Seitz, Vice Chair Carfagna, and Ranking Member Ashford; I am Trish Demeter, Managing Director of Energy Programs for the Ohio Environmental Council (OEC) Action Fund. Thank you for inviting testimony on Ohio House Bill 239 (Smith, R., Carfagna), which would establish a special subsidy for the joint owners of two coal-fired power plants - Kyger Creek located near Cheshire, Ohio and Clifty Creek in Madison, Indiana - paid for by Ohio electric customers.

The OEC Action Fund is opposed to this legislation, as it keeps our state stuck in energy sources and regulatory structures of the past, and could lead to higher energy bills for electric consumers which inhibits the economics of energy choice and energy efficiency. Additionally, the bill raises fairness issues in that it charges Ohio ratepayers for generation assets located in a different state, at an unknown cost, and with no foreseeable end to the imposed charges.

As we interpret the legislation, House Bill 239 impacts customers' bills by creating a charge on customers bills of any utility entity in Ohio that is a shareholder member of the Ohio Valley Energy Corporation (OVEC), or a sponsoring company of OVEC (which is a parent company of one or more of the shareholder members). This includes AEP-Ohio, FirstEnergy, Duke Energy, Dayton Power & Light, and rural cooperative utilities affiliated with Buckeye Power Generating, LLC will also pay the charge. The charge covers any and all costs associated with the operations of the two power plants, including deferred costs. The amount of the charge will fluctuate, based on operating costs and the price of electricity within the regional competitive market. Customers could receive a credit on their bill if the plants sell their power at a price below the going market rate for the region. However, the hope for a credit coming back to customers is far off at best, and unlikely to happen at all given the commonly-accepted projections for natural gas prices, and projections for wholesale energy and capacity prices moving forward.

While the mechanics are slightly different, House Bill 239 is incredibly similar to another pending piece of legislation before this committee - House Bill 178 (DeVitis) - which proposes a rate-payer funded subsidy for Ohio's two nuclear plants. House Bill 239 is different from the nuclear ZEN program proposal in HB 178 because while we know the total cost of the ZEN program to be approximately $300 million per year for 16 years, the total cost of House Bill 239 to Ohio ratepayers is unknown, and there does not appear to be an end date.

We urge this committee to ask hard questions of proponents regarding the total cost because, in fact, the total cost estimates were the subject of much of the litigation when this same idea of bailout out Kyger Creek and Clifty Creek was being considered at the PUCO just recently. During that time, the promise of a credit coming back to customers was not expected before the year 2021.

As proposed, House Bill 239 proposes a ratepayer mechanism similar to what was originally proposed in the latest Electric Security Plans (ESP) for AEP, Duke Energy, Dayton Power & Light, and FirstEnergy in which customers are on the hook for any expense associated with the OVEC-owned plants, and a credit in the off chance that market trends, and market prices, drastically change. The result of these cases, as they stand today:

- AEP's ESP is the only case that has been approved by the PUCO, and where the distribution utility still owns the entitlement to the plants themselves (as opposed to the unregulated generation affiliates of the monopoly distribution utility). The PUCO approved cost recovery for AEP's portion of the OVEC ownership. Therefore, AEP-Ohio customers are already paying, at least in part, for AEP's share of the cost for the Kyger Creek and Clifty Creek plants.
- Duke Energy's request for cost recovery for their OVEC share was rejected, and they never re-submitted a revised plan for their OVEC-related expenses to the PUCO.
- FirstEnergy's ESP case is still in the process of re-hearing, and there is not a final order on this case as of yet. They are seeking cost-recovery for their OVEC share in this case.
- DP&L's ESP case is still ongoing and being actively litigated.

Proponents of House Bill 239 appear to be claiming special status for the Kyger Creek and Clifty Creek plants, but the member and sponsoring companies of OVEC clearly pivoted in 2003 to be a jointly-owned unregulated generation corporation. OVEC's 2015 Annual Report states that "Since the termination of the DOE Power Agreement on April 30, 2003, OVEC's entire generating capacity has been available to the Sponsoring Companies under the terms of the Inter-Company Power Agreement (ICPA)." (pg 1) This ICPA was extended in 2011 and is in force until June 30, 2040. Acting as an unregulated generation company, the risk of the plants is on the shareholders of the member and sponsoring companies; these are the rules that every other unregulated generation company has to abide by.

Not only the agreement shows this, but the actions of OVEC demonstrate it. OVEC companies made business decisions to invest in these plants to keep them open, even after Ohio's electric restructuring in 2000, and after the termination of the US DOE supply contract in 2003. In 2003, installation of air pollution control equipment totalling $355 million, and again in 2011-13 timeframe, more upgrades to the plants cost well over $1 billion.

Moving forward, the plants pose an environmental risk that could potentially require future investments, but the decision to make the investments or not should be a business decision based on the risk to the owners of the plants, and not transferred over to the customers of some of the OVEC member-owners. Every year, Kyger Creek and Clifty Creek produce thousands of tons of coal ash, mercury, smog-forming pollutants and carbon dioxide, as well as other pollutants. Kyger Creek releases over a million pounds of sulfuric acid each year, 1.5 million pounds of hydrochloric acid, which is severely toxic and corrosive and can cause burns, ulceration, scarring and irritation, not to mention unlimited amounts of carbon pollution[1].

Proponents of House Bill 239 claim that they are unable to exit the agreement they hold among fellow OVEC shareholder companies and/or sponsoring companies. I urge this committee to understand the directive given to AEP-Ohio by the PUCO in particular when it comes to this matter. The PUCO ordered[2] the company to pursue transfer or sale of the utility's entitlement to the OVEC plants, and required the utility to report on its efforts in this regard. Why should ratepayers suddenly be footing the bill for what some proponents of this bill are claiming is an unworkable contract between private companies? If OVEC wants to continue operating these sixty-two year old coal plants, then shouldn't they take on the business risk rather than saddle Ohio customers with the risk? AEP has shown leadership in other matters, and demonstrated open willingness to transition towards cleaner, more efficient resources.

For example, just recently, prior to the Trump Administration's decision to withdrawal from the Paris climate agreement, AEP's CEO Nick Akins had some advice for the President: *"Work with the world community. Focus on the solutions that are in front of us...It is imperative for us to continue to stay focused on what the prize is. And that's that cleaner energy economy."*[3] AEP is showing leadership here with this statement and urging the President to work with the world community, and to focus on solutions. They should demonstrate the same leadership with their fellow Ohio Valley Energy Corporation partners to craft a plan for these plants without putting undue burden on Ohio consumers.

Thank you for the opportunity to testify today and I'd be happy to answer any questions at this time.

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[1] https://ghgdata.epa.gov/ghgp/main.do

[2] PUCO Orders in Case Number 13-1285-EL-SSO.

[3] http://fortune.com/2017/06/01/paris-agreement-donald-trump-american-electric-power-ceo/